

EXHIBIT C

TERMS AND CONDITIONS

1. Definitions. The following terms used in this Agreement have the meanings given to them below, unless the context clearly indicates otherwise.

- a. "Board" means the California Integrated Waste Management Board.
- b. "Executive Director" means the Executive Director of the Board, or his or her designee.
- c. "State" means the State of California, including, but not limited to, the Board and/or its designated officer.
- d. "Grant Manager" means the Board staff person responsible for monitoring the grant.
- e. "Grantee" means the recipient of funds pursuant to this Agreement.

2. Availability of Funds. The Board's obligations under this Agreement are contingent upon and subject to the availability of funds appropriated for the grant.

3. Payment.

a. The Budget attached to this Agreement as Exhibit B states the maximum amount of allowable costs for each of the tasks identified in the Work Statement attached to this Agreement as Exhibit A. The Board shall reimburse the Grantee for only those services specified in the Work Statement at only those costs specified in the Budget.

b. The Grantee shall carry out the work described on the Work Statement in accordance with the Budget, and shall obtain the State's written approval of any changes or modifications to the Work Statement or the Budget prior to performing the changed work or incurring the changed cost. If the Grantee fails to obtain such prior written approval, the Executive Director, at his or her sole discretion, may refuse to provide funds to pay for such work or costs.

c. The Grantee shall request reimbursement in accordance with the procedures described in Exhibit D to this Agreement.

4. Stop Work Notice. Immediately upon receipt of a written notice to stop work, the Grantee shall cease all work under this Agreement.

5. Failure to Perform as Required by This Agreement. The Board will benefit from the Grantee's full compliance with the terms of this Agreement only by the Grantee's (a) investigation and application of technologies, processes and devices which support reduction, reuse and/or recycling of wastes; or (b) cleanup of the environment; or (c) enforcement of solid waste statutes and regulations, as applicable. Therefore, if the Grantee fails to perform as required by this Agreement, the Board shall consider reimbursing the Grantee only for work performed under the grant which resulted in (a) information, a process, usable data or a partial product which can be used to aid in reduction, reuse and/or recycling of waste; or (b) the cleanup of the environment; or (c) the enforcement of solid waste

statutes and regulations, as applicable. The Executive Director shall determine in his or her sole discretion what work qualifies for reimbursement under this section.

6. Forfeiture of Grant Funds/Repayment of Funds Improperly Expended. If grant funds are not expended, or have not been expended, in accordance with this Agreement, or if real or personal property acquired with grant funds is not being used, or has not been used, for grant purposes in accordance with this Agreement, the Executive Director, at his or her sole discretion, may take appropriate action under this Agreement, at law or in equity, including requiring the Grantee to forfeit the unexpended portion of the grant funds and/or to repay to the Board any funds improperly expended.
7. Discretionary Termination. The Executive Director shall have the right to terminate this Agreement at his or her sole discretion at any time upon 30 days' written notice to the Grantee. In the case of early termination, a final payment shall be made to the Grantee for work which qualifies for reimbursement under this Agreement, including, but not limited to, Section 5 hereof, upon receipt of a financial report and invoices covering costs incurred prior to termination and a written report describing all work performed by the Grantee to the date of termination.
8. Force Majeure. Neither the Board nor the Grantee, its contractors, vendors or subcontractors, if any, shall be responsible hereunder for any delay, default or nonperformance of this Agreement, to the extent that such delay, default or nonperformance is caused by an act of God, weather, accident, labor strike, fire, explosion, riot, war, rebellion, sabotage or flood, or other contingencies unforeseen by the Board or the Grantee, its contractors, vendors or subcontractors and beyond the reasonable control of such party.
9. Audits/Records Access. The Grantee agrees that the Board, the State Controller's Office and the State Auditor General's Office, or their designated representatives, shall have an absolute right of access to all of the Grantee's records pertaining to this Agreement to conduct reviews and/or audits. Grantee's records pertaining to this Agreement, or any part thereof requested, shall be made available to the designated auditor(s) upon request for the indicated reviews and/or audits. Such records shall be retained for at least three (3) years after expiration of this Agreement, or until completion of the action and resolution of all issues which may arise as a result of any litigation, claim, negotiation or audit, whichever is later.
10. Site Access. The Grantee shall allow the State to inspect sites at which grant funds are expended and related work being performed at any time during the performance of the work and for 30 days after completion of the work.
11. Publicity and Acknowledgement. The Grantee shall acknowledge the Board's support each time projects funded, in whole or in part, by this Agreement are publicized in any news media, brochures or other type of promotional material.
12. Confidentiality/Public Records. The Grantee and the Board acknowledge that each party may come into possession of information and/or data which may be deemed confidential or proprietary by the person or organization furnishing the information or data. Such information or data may be subject to disclosure under the California Public Records Act, Chapter 3.5 of Division 7 of Title 1 of the California Government Code (commencing with Section 6250). The Board agrees not to disclose such information or data furnished by the Grantee and to maintain such information or data as confidential when so designated by the Grantee in writing at the time it is furnished to the Board, but

only to the extent that such information or data is exempt from disclosure under the California Public Records Act.

13. Ownership of Drawings, Plans and Specifications.

a. The Board shall have separate and independent ownership of all drawings, design plans, specifications, notebooks, tracings, photographs, negatives, reports, findings, recommendations, data and memoranda of every description or any part thereof, paid for in whole or in any part with grant funds. Copies thereof shall be delivered to the Board upon request. The Board shall have the full right to use said copies in any manner when and where it may determine without any claim on the part of the Grantee, its vendors, contractors or subcontractors to additional compensation.

b. The Grantee shall inform its contractors and vendors of the contents of this section and require them to agree that the Board shall own said copies and use them in any manner it wishes without paying additional compensation to the Grantee, its vendors, contractors or subcontractors. The Grantee shall also require its contractors to inform their subcontractors of the contents of this section and require such contractors to make the same agreement. The Grantee shall include the following or similar language in any contracts between the Grantee and its contractors for work under the grant which could result in the production of documents described in this section, and the Grantee shall require its contractors to include the following or similar language in any such contracts with their subcontractors:

"The parties agree that the California Integrated Waste Management Board (the "Board") shall have separate and independent ownership of all drawings, design plans, specifications, notebooks, tracings, photographs, negatives, reports, findings, recommendations, data and memoranda of every description or any part thereof developed pursuant to this agreement, in accordance with the terms and conditions of the Grant Agreement between [insert the Grantee's name] and the Board dated [insert date of this Agreement]." Copies of such documents shall be delivered to the Board upon request. The parties agree that the Board shall have the full right to use said copies in any manner when and where it may determine without any claim on the part of the parties hereto or their vendors or subcontractors to additional compensation. "

14. Copyrights and Trademarks.

a. The Grantee assigns to the Board any and all rights, title and interests to any copyrightable material or trademarkable material created or developed in whole or in any part with grant funds, including the right to register for copyright or trademark of such materials. Upon written request by the Grantee, the Board may, at the Executive Director's sole discretion, give written consent to the Grantee to retain all or any part of the ownership of these rights.

b. As used herein, "copyrightable material" includes all materials which may be copyrighted as noted in Title 17, United States Code, Section 102, including the following: 1) literary works, 2) musical works, including any accompanying words, 3) dramatic works, including any accompanying music, 4) pantomimes and choreographic works, 5) pictorial, graphic and sculptural works, 6) motion pictures and other audio visual works and 7) sound recordings.

c. As used herein, "trademarkable material" means any material which may be registered

as a trademark, service mark or trade name under the California Trademark Law, Chapter 2, Division 6 of the Business and Professions Code ("B&PC") (commencing with Section 14200). "Trademark" is defined in B&PC Section 14207. "Service mark" is defined in B&PC Section 14206. "Trade name" is defined in B&PC Section 14208.

d. The Grantee shall inform its contractors and vendors of the contents of this section and require them to agree that the Board shall own all copyrightable materials produced pursuant to this Agreement. The Grantee shall also require its contractors to inform their subcontractors of the contents of this section and require such subcontractors to make the same agreement. The Grantee shall include the following or similar language in any contracts between the Grantee and its contractors for work under the grant which could result in copyrightable material or trademarkable material created or developed in whole or in any part with grant funds, and the Grantee shall require its contractors to include the following or similar language in any such contracts with their subcontractors:

"The parties agree that all copyrightable or trademarkable materials (including, but not limited to, artwork, graphics, literary works, musical works, motion picture and other audio-visual works, sound recordings, and materials which may be registered as trademarks, service marks or trade names) developed pursuant to this agreement shall be the property of the California Integrated Waste Management Board (the "Board"), in accordance with the terms and conditions of the Grant Agreement between [insert the Grantee's name] and the Board dated [insert date of this Agreement]."

15. Patents. The Grantee assigns to the Board all rights, title and interest in and to each invention or discovery that may be capable of being patented, that is conceived of or first actually reduced to practice in the course of or under this Agreement, or with the use of any grant funds. Upon written request by the Grantee, the Board may, at the Executive Director's sole discretion, give written consent to the Grantee to retain all or any part of the ownership of these rights.

16. Real and Personal Property Acquired with Grant Funds.

a. All real and personal property, including equipment and supplies, acquired with grant funds shall be used by the Grantee only for the purposes for which the Board approved their acquisition for so long as such property is needed for such purposes, regardless of whether the Grantee continues to receive grant funds from the Board for such purposes.

b. Title to real and personal property acquired with grant funds shall vest as follows:

Subject to the obligations and conditions set forth in this section, title to all real and personal property acquired with grant funds shall vest upon acquisition in the State. For purposes of this section, "personal property" means all furniture, equipment and supplies and any other types of tangible personal property having a useful life of at least one year and a unit acquisition cost of at least five thousand dollars (\$5,000).

(1) A property identification tag must be placed on all personal property purchased in whole or part with State funds within thirty days of cost reimbursement for such personal property. The property identification tag, as provided by the Grant Manager, identifies the item as the property of the State of California, Integrated Waste Management Board, and includes an identification number.

(2) Within ninety days of expiration or termination of this Agreement, the Grantee shall provide the State with an inventory list which identifies the type of property purchased in whole or part with State funds, the unit acquisition cost and the property tag identification number for items of personal property.

(3) The Grantee is responsible for loss or damage to property purchased with State funds. Grantee is obligated to keep the property in good condition, subject to reasonable wear and tear, and to make all necessary repairs and adjustments, without qualification, while the property is in the care, custody and control of the Grantee. The State reserves the right to be given full and adequate access to the property purchased with State funds at reasonable times.

(4) Loss or theft of personal property acquired with State funds must be reported to the Grant Manager. The report shall contain a description of the loss or theft, plans to prevent a reoccurrence and in the case of theft, a copy of the police report.

(5) The State shall retain an ownership interest in any real or personal property purchased in whole or part with State funds. In the event of expiration or cancellation of this Agreement, the Grantee shall deliver title to such real property and possession of such personal property to the State, unless:

(a) This Agreement is renewed and the State agrees to the continued use of property by the Grantee; or

(b) The Grantee requests and receives approval to pay the State the then fair market value, as determined pursuant to State policies and guidelines, of the real or personal property acquired with State funds; or

(c) The State releases its ownership interest in the property in accordance with State policy.

(6) The Executive Director shall determine, in his or her sole discretion and subject to State regulations concerning surplus property, which, if any, of the options described in paragraph 5 of this Option 3 the State will choose.

17. Nondiscrimination Requirement.

a. During the performance of this grant, the Grantee, its contractors, vendors and subcontractors shall not deny the grant's benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, and shall not discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age or sex. The Grantee, its contractors, vendors and subcontractors shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

b. Grantee, its contractors, vendors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.), the regulations promulgated thereunder (California Administrative Code, Title 2, Section 7285.0 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Government Code Section 11135 et seq.) and the regulations or standards adopted by the Board to implement such article.

c. Grantee, its contractors, vendors and subcontractors shall give written notice of their obligations under this section to labor organizations with which they have a collective bargaining or other agreement.

d. Grantee shall include the nondiscrimination and compliance provisions of this section in all contracts to perform work or provide goods under the grant and require its contractors to include such provisions in any contracts with subcontractors.

18. Compliance with the Americans with Disabilities Act. By signing this Agreement, the Grantee certifies that it complies with the Americans with Disabilities Act of 1992, 42 U.S.C. 12101 et seq. (the "ADA"), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

19. Drug-Free Workplace Certification.

a. By signing this Agreement, the Grantee certifies compliance with California Government Code Section 8355 in matters relating to providing a drug-free workplace. The person signing this Agreement on behalf of the Grantee swears that he or she is authorized to legally bind the Grantee to this certification and makes this certification under penalty of perjury under the laws of the State of California.

b. As required by California Government Code Section 8355, the Grantee agrees to:

(1) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions that will be taken against employees for violations.

(2) Establish a drug-free awareness program to inform employees about all of the following: (a) the dangers of drug abuse in the workplace, (b) the Grantee's policy of maintaining a

drug-free workplace, (c) any available counseling, rehabilitation and employee assistance programs and (d) penalties that may be imposed upon employees for drug abuse violations.

(3) Require that each employee who works on the grant (a) receive a copy of the drug-free policy statement of the Grantee and (b) agree to abide by the terms of such statement as a condition of employment on the grant.

20. National Labor Relations Board Certification. By signing this Agreement, the Grantee swears under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against the Grantee within the immediately preceding two-year period because of the Grantee's failure to comply with an order of a federal court which orders the Grantee to comply with an order of the National Labor Relations Board.

21. Compliance. The Grantee shall comply fully with all applicable federal, state and local laws, ordinances, regulations and permits. The Grantee shall provide evidence that all local, state and/or federal permits, licenses, registrations and approvals for the purposes for which grant funds are to be expended have been secured. The Grantee shall maintain compliance with such requirements throughout the grant period. The Grantee shall ensure that the requirements of the California Environmental Quality Act are met for any approvals or other requirements necessary to carry out the terms of this Agreement. Any deviation from the requirements of this section shall result in non-payment of grant funds.

22. Disputes.

a. If the Grantee and the Executive Director fail to agree on a matter relating to this Agreement, the Board shall, upon the request of the Grantee or the Executive Director, consider and make a determination regarding the matter.

b. Notwithstanding this section, the Grantee shall have no right to request that the Board make any determination regarding any matter committed by this Agreement to the sole discretion of the Executive Director.

23. Controlling Law. All questions concerning the validity and operation of this Agreement and the performance of the obligations imposed upon the parties hereunder shall be within the jurisdiction and governed by the laws of the State of California.

24. Venue. All proceedings concerning the validity and operation of this Agreement and the performance of the obligations imposed upon the parties hereunder shall be held in Sacramento County. The parties hereby waive any right to any other venue.

25. Remedies. Unless otherwise expressly provided herein, the rights and remedies hereunder are in addition to, and not in limitation of, other rights and remedies under this Agreement, at law or in equity, and exercise of one right or remedy shall not be deemed a waiver of any other right or remedy.

26. Grantee's Waiver of Claims and Recourse Against the State. The Grantee agrees to waive all claims and recourse against the State, its officials, officers, agents, employees and servants, including, but not limited to, the right to contribution for loss or damage to persons or property arising out of, resulting from, or in any way connected with or incident to this Agreement. This waiver

extends to any loss incurred attributable to any activity undertaken or omitted pursuant to this Agreement or any product, structure or condition created pursuant to, or as a result of, this Agreement.

27. Grantee's Indemnification and Defense of the State. Grantee agrees to indemnify, hold harmless and defend the State, its officials, officers, agents, employees and servants, against any and all liabilities, losses, claims, demands, damages, actions, suits, judgments, costs and expenses (including, but not limited to, attorneys' fees and costs), of whatsoever character or kind, arising out of, resulting from, or in any way connected with or incident to any activity undertaken or omitted pursuant to this Agreement or any product, structure or condition created pursuant to, or as a result of, this Agreement, including, but not limited to, any and all claims and losses accruing or resulting to any and all contractors, subcontractors, materialmen, laborers and any other person, firm or corporation furnishing or supplying work services, materials or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Grantee in the performance of this Agreement.

28. No agency relationship created. The Grantee, its contractors, vendors, subcontractors, agents and employees, shall act in an independent capacity in the performance of this Agreement and not as officers, employees or agents of the State.

29. Assignment, Successors and Assigns.

a. This Agreement may not be assigned by the Grantee, either in whole or in part, without the State's prior written consent.

b. The provisions of this Agreement shall be binding upon and inure to the benefit of the Board and the Grantee and their respective successors and assigns.

30. Amendment. This Agreement may not be amended except by a writing signed by the parties hereto.

31. Time of the essence. Time is of the essence of this Agreement.

32. Severability. If any provisions of this Agreement are found to be unlawful or unenforceable, such provisions shall be voided and severed from this Agreement without affecting any other provision of this Agreement. To the full extent, however, that the provisions of such applicable law may be waived, they are hereby waived, to the end that this Agreement be deemed to be a valid and binding agreement enforceable in accordance with its terms.

33. Communications. All communications from the Grantee to the Board shall be directed to the Grantee's assigned Grant Manager, California Integrated Waste Management Board, 8800 Cal Center Drive, Sacramento, CA 95826. All notices required by this Agreement shall be given in writing and sent by prepaid mail, by personal delivery, or by FAX followed by prepaid mail or personal delivery.

34. Entire Agreement. This Agreement supersedes all prior agreements, oral or written, made with respect to the subject hereof and, together with all attachments hereto, contains the entire agreement of the parties.

**[TO BE COMPLETED ONLY IF OPTION NO. 2 UNDER
PARAGRAPH 16(b) OF EXHIBIT C IS CHECKED AND INITIALED]**

[illegible]

[illegible]